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Commissioner Marc Spitzer
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007-2996

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Re: Qwest's June 18, 2002 Letter to Commissioner Marc Spitzer;
AZ Docket Nos. RT-00000F-02-0271, T-00000A-97-0238

Dear Commissioner Spitzer:

Eschelon Telecom, Inc. ("Eschelon") received a copy of your letter to the Parties in Arizona Docket Numbers RT-00000F-02-0271 and T-00000A-97-0238. We also received a copy of the June 18, 2002 response to your letter by Qwest Corporation ("Qwest's Letter"). Although Qwest entered into unfiled agreements with several Competitive Local Exchange Carriers ("CLECs"),¹ Qwest discusses the Eschelon agreements specifically in its letter, indicating that it is using these agreements as an illustration. While Eschelon could agree to some of the statements in Qwest's Letter, Eschelon has a different perspective as to the events. Eschelon believes that, now that Qwest has submitted its letter, Eschelon should state its position for the Commission.

Qwest's conduct with respect to Eschelon, McLeod, Covad, or the other small CLECs with which Qwest had agreements needs to be reviewed in context. In the fall of 2000, Qwest's then Chairman and Chief Executive Officer, Joseph Nacchio, publicly announced an agreement with McLeod, which he characterized as a significant positive development. He stood before the Regional Oversight Committee ("ROC") and told members that Qwest was going to go behind closed doors and work out differences with CLECs, rather than litigate them. Representatives of Qwest repeatedly said they wanted to work on a "business-to-business" basis with Eschelon, rather than litigate issues. They also continually attempted to distinguish Qwest from the former company, US West.²

¹See Staff Report and Recommendation, *In the Matter of Qwest Corporation's Compliance with Section 252(e) of the Telecommunications Act of 1996*, AZ Docket No. RT-00000F-02-0271 (June 2, 2002); see also Amended Verified Complaint, *In the Matter of the Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements*, MPUC Docket No. P-421/C-02-197 (March 19, 2002). The "small CLECs" identified in the Minnesota Complaint include the following 10 CLECs: HomeTown Solutions, Hutchinson Telecommunications, Mainstreet Communications, Onvoy Communications, NorthStar Access, Otter Tail Telecom, Paul Bunyan Rural Telephone Cooperative, Tekstar Communications, VAL-ED Joint Venture, and WETEC. See *id.* ¶ 196.

²See also "After Joseph P. Nacchio, Qwest Communications International Inc.'s brash, Brooklyn-born chief executive, won the battle for US West in 1999, he wasted no time deriding the sleepy regional Bell.

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Qwest asked for time to make the transition to become a more CLEC-friendly wholesale business. Qwest made these types of statements to others as well.³ As the Escalations and Business Solutions Letter signed by Qwest and Eschelon (Nov. 15, 2000) ("Escalation Letter") shows, Eschelon's management wanted to believe in the promise of a better relationship under new management and attempted to use the non-litigious path touted by Qwest.⁴

Some members of Eschelon's management have worked for incumbent local exchange carriers ("ILECs") themselves. They have also been through changes in ownership and management and know that the related transitions can take time. Eschelon's management was open to working with Qwest and, if it really worked, to saying so publicly and perhaps even at some point supporting Qwest's 271 bid.⁵ Although it could be inferred from Qwest's Letter that it worked, it didn't work.

Despite the suggestion in Qwest's Letter to the contrary, the 271 provision in the Escalation Letter was a condition of obtaining and implementing a plan to improve service quality, not a provision following successful implementation of a plan. Qwest would not agree to develop a plan to address pressing service quality and other problems unless Eschelon dropped its opposition to Qwest's 271 bid. Whereas Qwest's Letter reads as though all service problems were solved *before* Eschelon dropped out of the 271 proceedings, Qwest required Eschelon to *first* drop out of the proceedings. Eschelon thus takes issue with the following statement in Qwest's Letter: "Eschelon's agreement to not oppose Qwest's Section 271 application was . . . expressly contingent upon the parties' ability to agree upon *and implement* a plan that satisfied Eschelon." Qwest's Letter, p. 2 (emphasis in original). The Escalation Letter included only an *agreement to agree* to a plan to implement service quality solutions. It did *not* condition Eschelon's agreement to not oppose Qwest's Section 271 application upon the parties' ability to *implement* a plan,

In senior management meetings, he described the company as 'U S Worst' and publicly likened the company's workers to 'clowns.' He surrounded himself with colleagues from his high-flying upstart, and cut U S West executives out of the loop. When Qwest moved into U S West's dated-looking headquarters here, Mr. Nacchio installed a sign on the 52nd floor that read: 'Excuse our appearance. We're entrepreneurs. This building was built in a different era and we save cash by not remodeling.'" Solomon, Deborah, "Bad Connection: How Qwest's Merger With a Baby Bell Left Both in Trouble --- Brash Mr. Nacchio Derided U S West After Buying It; Now, It's His Safety Net --- SEC Probes the Accounting," *The Wall Street Journal* (via Dow Jones), p. A1 (April 2002).

³ See, e.g., *id.*

⁴ Generally, public policy favors settling disputes. See, e.g., Minn. Stat. § 237.011 ("Telecommunications goals"; "encouraging voluntary resolution of issues between and among competing providers and discouraging litigation."). In the 271 dockets, Eschelon refrained from litigation while attempting to resolve disputes, including quality of service problems. Eschelon's conduct was legitimate behavior, particularly because Eschelon was not obligated to participate in the 271 proceedings. It is a separate question as to whether any other rule or policy required Qwest to disclose the known problems raised by Eschelon in discovery, pursuant to the burden of proof, or otherwise in the 271 proceedings.

⁵ In fact, when Eschelon experienced improvement in Qwest's performance, Eschelon acknowledged that improvement, even in some cases when the performance still had a ways to go. Eschelon's management hoped that positive reinforcement would encourage progress, and Qwest made it known that it was more willing to negotiate if CLECs made such statements.

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as represented in Qwest's Letter. Although Qwest's Letter cites the April 30, 2001, deadline for agreeing to an implementation plan, that deadline was extended more than once. An implementation plan was not agreed upon until July of 2001. The July agreements had to be implemented after that date. From November 15, 2000 through July of 2001 (and afterward), however, Qwest required that Eschelon not participate in 271 proceedings as a condition of continuing negotiations as to the plan and implementation of the plan and later agreements.

Nonetheless, the premise of Qwest's Letter, with respect to Eschelon, appears to be that Eschelon did not participate in 271 proceedings because Eschelon's problems were solved. Qwest's Letter particularly creates this impression for a reader unfamiliar with the underlying facts. But, this is not the case. The problems were not all solved. Qwest points to Eschelon's letter of November 3, 2000, to the Commission to suggest that, if any⁶ problems continued to exist, Eschelon would have continued to raise them in the 271 proceeding. As Qwest knows, however, the later November 15, 2000, Escalation Letter required Eschelon's silence.⁷ Despite Eschelon's arguments to the contrary, Qwest interpreted that agreement more broadly than not opposing Qwest and said that it required Eschelon not to participate in the 271/SGAT proceedings.⁸

⁶ The November 3, 2000, letter related primarily to cutover issues. Most of the problems raised by Eschelon in the Arizona 271 proceeding related to UNE-P. See Eschelon's Comments Addressing UNE Combinations, *In re. U S WEST Communications, Inc.'s Compliance with § 271 of the Telecommunications Act of 1996*, Arizona Docket No. T-00000A-97-0238 (Sept. 21, 2000) ("Arizona UNE-P Comments"); see also Verification of Garth Morrisette (same).

⁷ Qwest states that none of the five merger-related agreements in issue contained agreements to refrain from participation in 271 proceedings. See Qwest's Letter, p. 1. Qwest also states that only two agreements of those referred to by Commissioner Spitzer mentioned 271 proceedings. *Id.* If they do not imply that there were no other agreements relating to 271 participation, these statements at least leave the issue unanswered for the Commissioner. According to a news report, McLeod had an agreement not to oppose Qwest in 271 proceedings, but it was an oral agreement. See "States Probe Qwest's Secret Deals To Expand Long-Distance Service," *Wall Street Journal*, p. A10 (April 20, 2002) ("As part of that deal, McLeod agreed to stop its opposition to the Qwest-U S West merger. The company also had a verbal agreement to not oppose Qwest's entry into long-distance, McLeod officials told regulators, a contention that Qwest does not dispute.") Qwest does not state whether there were any others.

⁸ Qwest particularly objected to Eschelon raising publicly any problems with commercial performance. Eschelon argued that it could participate in SGAT proceedings to gain input into the wording of the SGAT without submitting evidence of problems with commercial performance. Eschelon believed that an opportunity to influence the language of the SGAT would have been important and valuable, because Eschelon has a different business plan from other CLECs involved in that process and could have tried to ensure that its issues were addressed. Qwest also uses the SGAT as a negotiation template, and participation in the SGAT proceedings would have allowed Eschelon to gain a better understanding of that template. But, Qwest took the opposite position and claimed that Eschelon's participation would breach the Escalation Letter. In fact, on the one occasion when Eschelon's representative later attended a multi-state 271/SGAT workshop in Denver, Qwest's attorney Charles Steese told her that she should not be there. Qwest's representatives also called Eschelon's top management to complain and made Eschelon "explain" its conduct. Afterward, Eschelon no longer participated in the 271 proceedings, as required by Qwest.

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Because Qwest required confidentiality and did not disclose the Escalation Letter,⁹ Qwest was able to create the impression that problems with Qwest's commercial performance were solved when all of them were not. Qwest bears the ultimate burden of proof as to its commercial performance on all checklist items, however, even if "no party files comments challenging compliance with a particular requirement." FCC BANY Order, ¶ 47.¹⁰

Eschelon entered into the plan and related agreements with the expectation that, if an agreement were reached as to service quality issues, Qwest would abide by the agreement. Although Qwest represents in Qwest's Letter that the 271 provision was . . . contingent upon the parties' ability to agree upon and implement a plan "*that satisfied Eschelon*,"¹¹ Qwest still has not implemented a plan to address Eschelon's quality issues to Eschelon's satisfaction. See, e.g., Affidavit of Lynne Powers (June 7, 2002) (copy enclosed).¹² Eschelon had many service problems, access and billing problems, and other issues with Qwest's commercial performance throughout the course of the Arizona 271 proceeding. Qwest was aware of these problems, through many discussions with Eschelon, as well as through monthly Report Cards provided by Eschelon to Qwest during that time. Eschelon could not raise these issues to the ACC, however, because Qwest continued to hold Eschelon to the requirement that Eschelon not oppose Qwest in 271 proceedings.¹³ Therefore, the following statement in Qwest's Letter is also inaccurate: "if it did not [work], Eschelon was free to say so, to the ACC or to anyone else." Although Eschelon was dissatisfied in several respects, pursuant to the November

⁹ Regarding Qwest's obligation to file agreements, Eschelon agrees with the following quotation by Anthony Mendoza, the Minnesota Department of Commerce deputy commissioner for telecommunications: "[Qwest] is the only company that is required to disclose them to the PUC." See "Companies didn't clear deals with PUC, regulators say," Steve Alexander, *Minneapolis Star Tribune*, Feb 15, 2002, p. D2. The federal Act places the burden on Qwest to make terms of interconnection, if any, available to other CLECs, and therefore it is Qwest's responsibility to make that determination and file any such agreements pursuant to the Act. Placement of the burden on Qwest makes sense, because Qwest has superior access to information relevant to whether a term or condition is of the type for which filing is required. (For example, while a CLEC may believe that a term is in settlement of an individual dispute, Qwest is in a position to know whether the dispute is truly unique or the experience is shared by other CLECs and whether the same or similar solution is suitable for, and should be made available to, other CLECs.) Eschelon is not aware of anything in the agreements that prevented Qwest from filing them. Qwest could have requested written consent for disclosure from CLECs at any time, if Qwest claims it was concerned about the confidentiality provisions that Qwest required as part of agreements.

¹⁰ *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404 (rel. December 22, 1999) ["FCC BANY Order"].

¹¹ See Qwest's Letter, p. 2 (emphasis added).

¹² Not only were Eschelon's substantive issues not fully addressed, but also Qwest did not even adhere to the terms of the Escalation Letter itself. The letter identified Qwest's then CEO Mr. Nacchio by name and required Mr. Nacchio to meet with Eschelon, but Mr. Nacchio refused to do so.

¹³ For example, the enclosed email, dated May 25, 2001, from Eschelon to Andrew Crain, Charles Steese, and Jim Gallegos of Qwest confirms that Eschelon was not responding to Qwest discovery in the Arizona 271 proceeding, because Eschelon was "not participating in the [Arizona 271] proceeding at Qwest's request."

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15, 2000, Escalation Letter, Eschelon was not "free to say so, to the ACC or to anyone else."

In Qwest's Letter, Qwest also points out that Eschelon participated in the Change Management Process ("CMP") (including Re-design) while the 271 proceeding was pending. The CMP is separate from the 271 proceedings, and issues raised in monthly CMP meetings were not necessarily brought to the 271 proceedings. Any issues that were did not have the benefit of explanation by Eschelon, which had first-hand experience with the problems. Eschelon would have participated more fully in CMP, if Qwest had not exerted pressure on Eschelon not to do so. Eschelon argued that CMP was not a 271 proceeding and therefore the Escalation Letter did not prohibit participation in CMP.¹⁴ Qwest took the opposite position and actively enforced it. Qwest had Eschelon representatives pulled from CMP Re-Design meetings, reviewed but did not disclose written comments by Eschelon on a Qwest status report that were critical of that report, required Eschelon to withdraw a Change Request relating to anti-competitive behavior before it was distributed to other CLECs, and took other steps to inhibit Eschelon's participation in CMP/CMP Re-Design and prevent information from becoming known. Finally, Eschelon's President personally attended CMP monthly and Re-Design meetings to determine whether Qwest's attacks on Eschelon representatives were fair and whether Qwest's representations that CMP issues could be resolved just as well outside of CMP were accurate. Eschelon's President concluded that Qwest's statements were not fair or accurate and the Eschelon's CMP participation was appropriate and necessary to resolve critical business issues. Eschelon's President encouraged Gordon Martin of Qwest to also attend the CMP meetings to gain an understanding of that process and Eschelon's perspective. Mr. Martin did not do so. Although Eschelon ultimately maintained some level of participation in CMP, it is difficult and frustrating, in light of the actual events, to read that Qwest is now holding out Eschelon's participation in CMP as evidence of alleged full and uninhibited participation in CMP.

Qwest also states in its letter that: "The purpose of the settlements was not to suppress complaints but rather to *resolve* them." Qwest's Letter, p. 1 (emphasis in original). However, in addition to Qwest's position with respect to CMP and 271/SGAT meetings, on October 30, 2001, Qwest provided two written proposals to Eschelon. In those proposals, Qwest said it would require Eschelon to "deliver to Qwest all reports, work papers, or other documents related to the audit process" relating to missing switched access minutes to Qwest. Qwest also conditioned payments otherwise legitimately due to Eschelon upon Eschelon agreeing that it would "when requested by Qwest file supporting testimony/pleadings/comments and testify whenever requested by Qwest in a manner suitable to Qwest (substantively)." Eschelon refused to sign these proposals. The issues between Eschelon and Qwest could easily have been resolved

¹⁴ In this general time frame, Qwest stopped making payments to Eschelon, despite written contractual obligations to pay Eschelon. When doing so, Qwest was well aware of market conditions and the resulting additional pressure that would be placed on Eschelon from stopping the payments and knew that doing so gave Qwest greater leverage over Eschelon. Eschelon does not know whether any CLEC that did stop its participation in CMP, if any, continued receiving payments whereas the payments to Eschelon stopped.

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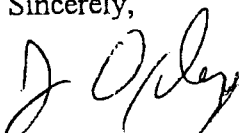
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without these provisions, which did nothing to address problems experienced by Eschelon. But, Qwest included those terms as an integral part of its proposals. Because Qwest has made representations regarding its purpose in proposing settlements, the Commission should have these facts when making that determination.

The telecommunications market is experiencing critical challenges. As a start-up, smaller company, Eschelon is particularly affected by these challenges. Resources are tight, and Eschelon's energy needs to be devoted to meeting the business challenges that it faces daily. Eschelon is also aware that it has settled some of its own claims with Qwest and that it may be viewed as late in speaking out. In light of all of this, Eschelon hesitated to send this letter. Because of Qwest's specific discussion of its dealings with Eschelon in Qwest's Letter, however, Eschelon decided it should share its different perspective.

Sincerely,



J. Jeffery Oxley

Vice President, General Counsel, and Corporate Secretary

cc: Chairman William A. Mundell
Commissioner Jim Irvin
Timothy Berg, Qwest
Todd L. Lundy, Qwest
Richard Corbetta, Qwest
Docket Control (original plus 20 copies)
Service Lists (all parties of record in both dockets)

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF MINNESOTA**

Gregory Scott
Edward A. Garvey
Marshall Johnson
LeRoy Koppendraye
Phyllis Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Commission Investigation Into
Qwest's Compliance with Section 271 of the
Telecommunications Act of 1996 that the
Requested Authorization is Consistent with the
Public Interest, Convenience and Necessity

PUC Docket No. P421/CI-01-1373
OAH Docket No. 6-2500-14488-2

**AFFIDAVIT OF
F. LYNNE POWERS**

I, F. Lynne Powers, being duly sworn, state:

1. I am the Executive Vice President of Customer Operations for Eschelon Telecom, Inc. ("Eschelon"). My areas of responsibility include provisioning, repair, and customer care.

UNE-Platform

2. In approximately mid-May of 2000, Eschelon began efforts to prepare to order from Qwest UNE-Platform ("UNE-P") lines. UNE-P is a combination of the following unbundled network elements ("UNEs"): loop, switching, and transport. At that time, Qwest did not provide information about feature availability with UNE-P on its web-site. Feature information is critical to developing and marketing a product. It took more than four months for Eschelon to extract that information from Qwest. When Eschelon finally obtained a list of available features, the list was incomplete and unclear.

3. In the absence of receiving a definitive list of available features for UNE-P from Qwest and in the process of compiling its own list of Universal Service Ordering Codes ("USOCs") for ordering, Eschelon attempted to test availability of various features and USOCs by placing trial orders (using employee lines) in Minnesota. Eschelon wanted to submit trial orders in additional states as well. But, at that time, Qwest would not accept orders for UNE combinations anywhere in its territory, except Minnesota, without a contract amendment. Qwest took this position even though Eschelon has an interconnection agreement with Qwest in every one of the states in which it operates¹ that

¹Eschelon does business within Qwest territory in Arizona, Colorado, Minnesota, Oregon, Utah, and Washington. Other than the information relating to the Minnesota UNE-P trial orders (and certain repair information discussed below), the information in this Affidavit (including that relating to UNE-E/UNE-Star) applies in each of these states.

requires Qwest to provide UNEs "in combination" in accordance with the Act, FCC rules, and state law.² In those states, Eschelon has opted in to interconnection agreements of AT&T Communications, Inc. ("AT&T"). Therefore, Eschelon, AT&T, and other opt-in Competitive Local Exchange Carriers ("CLECs") should have been able to order UNE combinations pursuant to the terms of their existing interconnection agreements with Qwest. But, for many months, the only state in Qwest's territory where Qwest would process orders for UNE combinations without a contract amendment was Minnesota. Although Qwest had previously required a contract amendment in Minnesota as well, Qwest changed its position after the Minnesota Public Utilities Commission issued a decision requiring Qwest to provide UNE Combinations.³

4. In Minnesota, where Qwest allowed Eschelon to submit UNE-P orders, the UNE-P trial orders resulted in denial and loss of features, including Qwest deletion of features without notice to Eschelon; unclear and changing processes; and customer-affecting service problems. Minnesota UNE-P trial order customers experienced:

- complete outages, with no dial tone, for a day or more
- inability to call out locally
- inability to place long distance calls
- loss of features
- inability to forward calls between central offices

5. The problems were too numerous to launch a product offering using UNE-P at that time, because doing so would not only have caused Eschelon to incur unnecessary expenses and delays but also exposed Eschelon's end-user customers to these problems. Eschelon also could not afford to leave its Off-Net⁴ customer base on resale, which was prohibitively expensive. UNE combinations not only have lower prices than resale, but also they allow CLECs to collect switched access payments that, with resale, go to the incumbent. Although Eschelon had a contractual right to the lower

² See Eschelon-Qwest Interconnection Agreements: AZ, Part A, ¶ 21 & Att. 3, ¶¶ 3.3 & 18.1; CO Part A, ¶ 8.1 & Att. 3, ¶¶ 2.4 & 15.1; MN, Part A, ¶ 20 & Att. 3, ¶ 14.1; OR, Part A, ¶¶ 19 & 36 & Att. 3, ¶ 14.1; UT, Part A, ¶ 21 & Att. 3, ¶¶ 3.3 & 18.1; WA, Part A, ¶ 21.1 & Att. 3, ¶¶ 1.2.2 & 18.1; *see, e.g.*, Agreement for Local Wireline Network Interconnection and Service Resale Between Advanced Telecommunications, Inc. and U S WEST Communications, Inc., for the State of Arizona, Agreement No. CDS-000106-0212; Decision No. 62489 (Jan. 20, 2000) ("Agreement"). The Arizona Agreement, for example, deals specifically with issues such as the definition of "Combinations," *see id.* Part A, p. 4; cooperative testing of combinations, *see id.* ¶ Att 3, Para 18.1; service order process requirements for combinations, *see id.* Att. 5, ¶ 2.2.2.1, and other issues.

³ See Order After Remand, *In re. the Federal Court Remand of Issues Proceeding from the Interconnection Agreements Between U S WEST Communications, Inc. and AT&T, MCI, MFS, and AT&T Wireless*, Docket No. P-421/CI-99-786 (March 14, 2000) ("MN Order After Remand").

⁴ Eschelon has its own switches for providing voice service. When using its switches to serve its customers, Eschelon orders collocation, loops, *etc.*, from Qwest. In some cases (particularly when a customer is outside of the area served by Eschelon's switch), Eschelon also orders UNE-E, UNE-P, or resale from Qwest to serve customers. Eschelon often refers to customers and lines served through Eschelon's own switching facilities as "On-Net" or "On-Switch" and customers and lines served through UNE-E, UNE-P, or resale as "Off-Net."

prices and the access payments, it found that the UNE-P combination was not, as a practical matter, available from Qwest at an acceptable level of quality.

UNE-Eschelon

6. Eschelon raised these concerns with Qwest.⁵ On November 15, 2000, Eschelon and Qwest executed an interconnection agreement amendment pursuant to which Eschelon could order another UNE combination, or "Platform," which was also a combination of loop, switching, and transport. See Exhibit 1. Qwest initially referred to this product as UNE-Eschelon ("UNE-E"). Qwest presented UNE-E as being like UNE-P, except generally for pricing that includes a flat rate up to a certain number of minutes;⁶ the ability to order Qwest voice messaging and Digital Subscriber Line ("DSL")⁷ (at retail rates); and inclusion of Eschelon's existing resale base customers in the Platform product.⁸ Qwest said that, with UNE-E, Eschelon would be able to collect the switched access revenues that are unavailable with resale. Although switched access is also available with UNE-P, the problems described above with UNE-P remained unsolved. Instead of addressing those problems at that time, Qwest promised Eschelon that it would move Eschelon's base of resale customers to UNE-E. To avoid the provisioning problems associated with submitting separate Local Service Requests ("LSRs") for each line being converted from resale to a UNE combination -- such as the problems Eschelon had experienced when attempting to order UNE-P -- Qwest said that it would develop a tool to do the work on its side. With this tool, Qwest would convert Eschelon's resale base to UNE-E, without the need for individual LSRs from Eschelon and without adverse customer impact.

7. Qwest said that it would not be able to complete the conversion of Eschelon's resale base to UNE-E for a few months. Therefore, in the short-term, Qwest told Eschelon to order UNE-E through the existing resale process. See, e.g., Exhibit 2 (email from Judy Rixe, Qwest's then Account Manager for Eschelon). Qwest said that it would continue to bill Eschelon at the resale rates through the existing resale billing process. See *id.* Qwest said that Qwest Finance would then compare the end-of-month billed revenues to the UNE-E rates and pay Eschelon the difference. See *id.* After the

⁵ In addition, Eschelon described these problems in 55-page comments filed with the Arizona Corporation Commission on September 21, 2000. See Eschelon's Comments Addressing UNE Combinations, *In re. U S WEST Communications, Inc.'s Compliance with § 271 of the Telecommunications Act of 1996*, Arizona Docket No. T-00000A-97-0238 (Sept. 21, 2000) ("Arizona UNE-P Comments"); see also Verification of Garth Morrisette (same).

⁶ See Exhibit 1 (UNE-E Amendment, Att. 3.2, pp. 9-10). Although UNE-E was supposed to be distinguishable from UNE-P because it is flat-rated, Eschelon later learned that UNE-P-Centrex is also flat-rated. See <http://www.qwest.com/wholesale/pcat/unepecentrex.html> ("Until Qwest systems are able to record and bill actual usage information, Shared Transport Originating MOU and Local Switching Originating MOU will be billed at a flat monthly rate based on assumed MOU."). See excerpt attached as Exhibit 3.

⁷ Although Qwest now offers Qwest DSL with UNE-P lines (see Exhibit 8), at that time Qwest's position was that a CLEC could not order DSL with UNE-P lines.

⁸ In the agreement, Qwest did not place limits on the conversion of Eschelon's resale base to the new "Platform." See Exhibit 1. Later, Qwest began imposing limitations, such as excluding certain features and lines from the conversion.

first few months, however, the ordering and billing processes were supposed to change to allow Eschelon to order UNE-E (not resale) and receive accurate UNE-E bills. *See, e.g., id.* ("Develop billing process for flat-rated UNE-Deal"). Although Qwest later pushed out its target dates for the promised changes, Qwest continued to represent that it was proceeding with changes to allow accurate UNE-E ordering and billing. *See, e.g.,* Exhibit 4 (email and memorandum from Freddi Pennington of Qwest).

UNE-Star

8. Shortly after agreeing to provide UNE-E to Eschelon, Qwest began to refer to UNE-E as "UNE-Star." *See, e.g.,* Exhibit 2 (subject line of "UNE-Star Implementation").⁹ Qwest said that it had formed an internal team of more than 35 Qwest representatives to implement the "new product." *See, e.g., id.* Qwest referred to these representatives as its "UNE-STAR Implementation team." *See, e.g.,* Exhibit 4. In many meetings, Qwest referred to UNE-Star as a Qwest "product." Sometimes, Qwest applies a one-size-fits-all approach to "products" that does not account for contractual differences. Eschelon agreed to the UNE-E interconnection agreement amendment, *see* Exhibit 1, based on Qwest's representations that UNE-E would have certain characteristics (such as feature availability and avoiding adverse customer impact). Eschelon expressed concern that it needed visibility into, and participation in, the UNE-Star product implementation to ensure that the product was implemented consistent with the promises made to Eschelon. Eschelon also believed that it could provide a valuable service to Qwest by providing CLEC input that would improve the product. But, Qwest did not allow Eschelon to meet with Qwest's UNE-STAR Implementation team. Instead, Eschelon had to press Qwest service and product managers, as well as Information Technologies ("IT") personnel, to provide information and updates to Eschelon about UNE-Star. *See, e.g.,* Exhibits 4 & 5. Qwest said that UNE-E and the UNE-Star product were the same. *See, e.g.,* Exhibit 5.

9. The process experienced many delays. *See, e.g.,* Exhibits 4 & 5. In the meantime, Eschelon had to devote resources to dealing with the UNE-E/UNE-Star problems that Qwest had agreed to solve. Now, I understand that Qwest has testified in the cost case that "we don't have a product anywhere called UNE-Star" and that "you're never going to see any offering for like a UNE-Star if that's the name of an agreement. It's not the name of one of our products."¹⁰ These statements cause me to ask whether

⁹Qwest refers to the same product as "UNE Eschelon" ("UNE-E") when provided to Eschelon; as "UNE-McLeod" ("UNE-M") when provided to McLeodUSA; and otherwise as "UNE-Star." *See* Qwest Corporation's Verified Answer to the Complaint of the Minnesota Department of Commerce, *In re. Complaint of the Minnesota Department of Commerce Against Qwest Corporation*, Docket No. P-421/C-02-197, ¶ 7, p. 12 (March 1, 2002) ["Qwest Verified Answer"] (excerpt attached as Exhibit 6).

¹⁰ Cross-Examination of Kathryn Malone, Transcript Vol. 7, page 104, lines 23-24 & page 105, lines 5-7 (May 21, 2001), *In the Matter of the Commission's Review and Investigation of Qwest's Unbundled Network Element (UNE) Prices*, PUC Docket No. P-421/CI-01-1375. *See* excerpt attached as Exhibit 7. Ms. Malone testified that she is "Manager - Wholesale Markets" and that she is "responsible for Wholesale advocacy surrounding interconnection and resale of products and services" at Qwest. *See* Direct Testimony of Kathryn Malone, p. 2, lines 4-6 (March 18, 2002; same docket); excerpt attached as part of Exhibit 7. According to Ms. Rixe, "Wholesale Advocacy" and "Wholesale Marketing" were represented on the Qwest internal UNE-Star implementation team. *See* Exhibit 2.

Qwest ever intended to deliver on its promises to implement UNE-E/UNE-Star long-term product improvements, or whether Qwest was simply delaying Eschelon and causing Eschelon to expend resources on a claimed product that Qwest did not intend to deliver as promised.

10. As discussed, one of the advantages of the November 15, 2000, interconnection agreement amendment was supposed to be that Qwest would convert Eschelon's base from resale to UNE-E/UNE-Star without the necessity of Eschelon placing individual LSRs to convert each customer. Qwest never completed the physical conversion to UNE-E/UNE-Star, however, and the UNE-E/UNE-Star product suffers from its own problems. Now, a year and a half later, Eschelon has had to begin, at this late date, the process of placing individual LSRs to convert customers to UNE-P, due to billing, provisioning, and pricing issues with UNE-E/UNE-Star.¹¹ Although Eschelon has been entitled under its interconnection agreement to UNE-P pricing since before 2000, Eschelon will not receive the benefits of UNE-P pricing until the lines are converted. I estimate that it will take a minimum of seven months and eighteen full-time employees, as well as additional resources, to complete the conversion from UNE-E/UNE-Star to UNE-P. I have already hired 18 people for this purpose. Because we are moving a large number of lines to UNE-P, Eschelon must hope that Qwest has been forced to make sufficient improvements in the UNE-P product to allow the transition and the product to work much more smoothly than Qwest's attempt to provision UNE-P in 2000.

11. Although Eschelon has commenced a conversion of many of its lines to UNE-P, the vast majority of Eschelon's Off-Net lines are still priced according to the UNE-E/UNE-Star product. UNE-E/UNE-Star suffers from billing, provisioning, documentation, switched access, reporting, and repair problems.

Billing

12. Eschelon still receives resale bills for UNE-E/UNE-Star lines, instead of accurate UNE-E/UNE-Star bills. The UNE-E price must be determined to reconcile the resale bills to the UNE-E/UNE-Star price. This was supposed to be an interim process. Qwest said that Eschelon would continue to receive a resale bill until Qwest implemented a process for UNE-E/UNE-Star billing. *See, e.g.,* Exhibit 2. Initially, Qwest estimated that this process would be in place by the first quarter of 2001. But, the process was

¹¹ On March 1, 2002, Eschelon and Qwest entered into a Settlement Agreement. (Paragraph 6 of the Settlement Agreement provides that the Settlement Agreement will be filed with the state commissions in states where Eschelon is certified and has an interconnection agreement. Qwest is to take care of the filing.) Paragraph 3(f) provides that Qwest and Eschelon will form a team for the purpose of developing a plan "to convert UNE-E/UNE-Star lines to UNE-P." Eschelon has started to order UNE-P, and the conversion commenced in April and May of 2002. The conversion has not yet been completed. The lines that were expected to convert as a records only change were converted first. Those lines were on common blocks (so Eschelon had to issue only one order for the conversion of a number of lines). The more time-consuming conversions are other 1FB and Centrex business lines to UNE-P. It is early in the conversion process. Some customer-affecting problems have occurred during the migration of these lines. Although the number does not appear to be great at this early stage, each customer-affecting problem is a serious issue for us. Eschelon is continuing to monitor this issue to determine the cause and extent of any problems.

delayed. *See, e.g.,* Exhibit 4. The process is still not in place, and Eschelon continues to receive resale bills for UNE-E/UNE-Star lines today.

Provisioning

13. Qwest has provisioned the UNE-E/UNE-Star product using a manual process with a known 50% - 70% error rate. From August through October of 2001, Eschelon reviewed service order completion notices to identify order errors and identified an error rate of approximately 50%. Qwest rejected orders in error or removed features without Eschelon's knowledge, and Qwest's translations personnel were unfamiliar with the proper process for translating the UNE-E/Star product in the switch. Many of the errors resulted in adverse end-user customer impact (including repair issues, because the customers did not always experience the impact of the error until some time after the order activity). Eschelon objected to the adverse customer impact and the amount of resources that Eschelon had to expend on dealing with these errors. Eschelon was forced to escalate virtually every problem. In November of 2001, Qwest finally instituted a resource-intensive manual review of the UNE-E/UNE-Star service orders. I attended a meeting during which Toni Dubuque and Chris Siewart of Qwest told Eschelon that Qwest's error rate for UNE-E/UNE-Star service orders was approximately 70%. Qwest has not reported an error rate to Eschelon since then. Although the error rate is high, Qwest's internal review has substantially reduced the number of errors that adversely impact end-user customers. Some customer-affecting problems still occur, however.¹²

14. Eschelon was experiencing even more provisioning problems when first using UNE-E/UNE-Star. UNE-E/UNE-Star essentially provides Centrex functionality on a POTS product. Initially, Qwest required Eschelon to order the needed Centrex-line features on a 1FB. Significant problems arose when a customer was moving to UNE-E/UNE-Star from a Qwest 1FB, often because the features did not interact properly. Qwest told Eschelon that these problems would be addressed by ordering the 1FBs with Custom Calling Management System (CCMS). On July 31, 2001, Qwest and Eschelon entered into two amendments to the interconnection agreement (relating separately to recurring and non-recurring charges) to modify the product to allow ordering of 1FBs with CCMS. *See* Exhibit 1. These amendments were supposed to alleviate the provisioning problems without requiring a change in platform, for which Qwest charges higher rates. The majority of Eschelon's UNE-E/UNE-Star lines require use of 1FB with CCMS. After signing the Amendments, Qwest operational personnel informed Eschelon that CCMS is an old product that the product manager actually wanted to retire and that few people at Qwest are knowledgeable about it. This is consistent with the problems that Eschelon has experienced. Both the service order and the translations personnel at Qwest appear untrained to provide the UNE-E/UNE-Star product. Provisioning the product is requiring additional resources and manual effort by both Qwest and Eschelon. Qwest has indicated that UNE-E/UNE-Star orders will never flow through.

¹² Although Eschelon is converting lines to UNE-P, many lines will be on UNE-E for months as that process continues, and some lines will remain on UNE-E after the conversion (such as lines that Qwest deems "ineligible" for UNE-P, such as lines with Qwest voice mail).

Documentation

15. Other than some job aids, Qwest has provided little documentation to describe and support the UNE-E/UNE-Star product. UNE-E, or UNE Star, is not identified as one of the available "UNE-P products" in the UNE-P Product Description in Qwest's Product Catalog on Qwest's wholesale website. (See <http://www.qwest.com/wholesale/pcat/unep.html>, p. 1, attached as Exhibit 8.) Because Qwest did not clarify the distinctions between the products in its materials, Qwest's UNE-P announcements have caused confusion. Eschelon representatives, including myself, have had to ask Qwest whether UNE-P announcements (such as Qwest notices regarding systems changes) also apply to UNE-E/UNE-Star and, if so, how they apply. See, e.g., Exhibit 5. As discussed, this was supposed to be a short-term problem, but Qwest has not delivered on all of its promises to implement the UNE-E/UNE-Star product. Some references to UNE-Star can now be found in the systems release notes on Qwest's wholesale web page, but product notifications and training were not developed as indicated (see, e.g., Exhibit 5).

Switched Access

16. Over a period of time, Eschelon complained to Qwest that Qwest was not providing complete and accurate records from which Eschelon could bill interexchange carriers access charges for UNE-E/UNE-Star customers.¹³ As an example, if a Qwest retail customer who has selected Qwest as the intraLATA toll PIC calls an Eschelon UNE-E/UNE-Star local customer, Qwest should provide a record of that intraLATA toll call to Eschelon, so that Eschelon can bill Qwest for terminating access. Eschelon needs an accurate report of switched access minutes of use ("MOU"), so that Eschelon may properly bill interexchange carriers for access. Qwest disputed Eschelon's claims as to the vast majority of the missing minutes. Recently, after Eschelon's agreement not to oppose Qwest in 271 proceedings or bring complaints terminated and Eschelon was allowed to raise this issue publicly, the number of minutes reported to Eschelon jumped significantly and became closer to the number of minutes that Eschelon has maintained it should have been receiving all along.¹⁴ The increase in number of minutes occurred very recently, and Eschelon does not know yet whether all of these minutes will be billable or whether this increase in the number of minutes will continue.

Reporting

17. Although the conversion from UNE-E (with resale billing) to UNE-P has only recently commenced, Qwest is already reporting Eschelon's UNE-E/UNE-Star lines as UNE-P lines for purposes of the Regional Oversight Committee (ROC) Performance Indicator Definition (PID) data. Previously, Qwest reported these lines as business lines, which is how the lines appear on the bill received by Eschelon. In reviewing the PID

¹³ This is true for On-Net customers as well.

¹⁴ Although Qwest may claim that this is due to a change from use of an interim process to use of Daily Usage Files ("DUF"), Eschelon previously attempted to move off the interim process. Qwest asked Eschelon to return to the interim process, because the long-term process was not working at that time.

data recently, Eschelon found that Qwest's reporting of the lines changed from business lines to UNE-P lines in approximately November of 2001. *See Exhibit 9.*¹⁵ At that time, Qwest changed its reporting not only on a going forward basis, but also retroactively to January of 2001 so that months previously reported as business lines were then reported as UNE-P lines. *See id.* Eschelon was not notified in advance of this change.

18. Qwest is reporting a nearly perfect billing accuracy rate in the PID data. One hundred percent of the UNE-E/UNE-Star rates billed to Eschelon from Qwest for UNE-E/UNE-Star lines, however, are inaccurate, as discussed. If Qwest is able to report a nearly perfect billing rate under these circumstances, a legitimate question exists as to whether the measure accurately reflects the CLEC experience. Additionally, it is unclear whether the PID measures capture the UNE-E/UNE-Star problems that result from service order writing issues. Qwest is manually handling the UNE-E/UNE-Star orders, which means that a Qwest service order writer re-types the order after Eschelon has typed and submitted it. Orders submitted by Eschelon are often not typed correctly by Qwest's order writer. As a result, problems occur, such as features not being provisioned properly. When this happens, an Eschelon customer will report a trouble, because the feature is not working properly. Qwest will close the trouble ticket and indicate "No Trouble Found," because Qwest takes the position that the problem is a service order issue, even though Eschelon's initial order was submitted correctly. Therefore, the trouble does not appear to be captured in the PID data.

Repair (DSL)

19. On November 15, 2000, Qwest agreed to provide Qwest DSL (at retail rates) with UNE-E/UNE-Star. *See Exhibit 1, Att. 3.2, ¶ III(D).*¹⁶ Although Qwest allows Eschelon to order DSL with UNE-E/UNE-Star, Qwest is not prepared to deal with DSL repair issues. Qwest has said that it does not have back end system records containing the DSL technical information needed for repair for Centron/Centrex Plus lines with DSL. On June 5, 2002, Qwest Process Specialist Susie Wells confirmed this to Bonnie Johnson and Tina Schiller of Eschelon, who are both in my organization. Ms. Wells said that, when the service order is processed, the critical technical DSL information needed for repair drops off and does not populate in the Qwest back end systems. She said this information is lost and cannot be retrieved. Ms. Wells said that this problem occurs in Qwest's Eastern and Central billing regions. Those regions include Arizona, Colorado, Minnesota, and Utah, of Eschelon's states. This issue is of particular concern to

¹⁵ Although separate categories are used for other products (such as UNE-P-POTS), separate categories were not created for UNE-E products (such as UNE-E-POTS). *See Exhibit 9.* If Qwest is claiming that it included UNE-E lines with UNE-P lines because there was not a separate category, Qwest could have simply created another category, as it did with UNE-P-POTS.

¹⁶ Since then, Qwest has also made Qwest DSL available with UNE-P, including UNE-P-Centrex (and Centron). *See, e.g.,* <http://www.qwest.com/wholesale/pcat/uneppcentrex.html> ("You may convert existing Qwest Digital Subscriber Line (DSL) to UNE-P Centrex with Qwest DSL service. You may also request the installation of new Qwest DSL service on an eligible and existing UNE-P Centrex, subject to loop qualification and availability.") (excerpt attached as part of Exhibit 8). Qwest (Susie Wells) has indicated that the DSL repair problem applies to both UNE-E and UNE-P.

Due to this problem, when Eschelon calls the Qwest repair centers (general repair or DSL repair), the Qwest representative will have no repair record with the information needed to repair a trouble in the DSL portion of the line. The Qwest representative may not even know that the customer has DSL. At a minimum, the customer will experience delays, and Eschelon will have to expend resources on escalating and resolving the problem, if it can be resolved. The DSL may have to be re-installed, because the technical information about the existing DSL service is lost. Qwest has asked Eschelon to provide additional forecasting and conduct additional monitoring of repair issues because of this problem. This imposes extra resource burdens on Eschelon. More importantly, Eschelon's end-user customers will be adversely affected. Also, because Qwest wholesale repair for DSL with Centrex Plus/Centron lines is not truly available for UNE-E or UNE-P, due to the missing repair information, Eschelon is discouraged from selling DSL to its customers.

Dated this 7th day of June 2002.

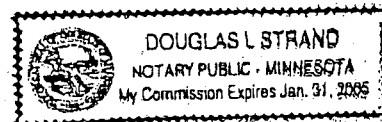
Lynne Bore

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Witness my hand and official seal.

Douglas L. Strand
Notary Public

January 31, 2005



-----Original Message-----

From: Clauson, Karen L.
Sent: Friday, May 25, 2001 3:03 PM
To: 'Andrew Crain'; 'Charles Steese'
Cc: 'jhgalle@uswest.com'; Oxley, J. Jeffery
Subject: FW: §271 Proceeding, AZ Docket No. T-00000-97-0238

Andy and Chuck:

We discussed these data requests with Jim Gallegos, and he indicated that he believed they were served on us inadvertently, given that we are currently not participating in the proceeding at Qwest's request. Therefore, we are not responding to them. If for some reason that is not the case, Eschelon reserves all objections.

As far as provision of residential service in Arizona, Eschelon does not provide residential service. Qwest was present at the certification hearing where Garth Morrisette testified to that. We have found one residential (1FR) line on our bill, after finding that Qwest's monthly performance report shows one residential line. We are checking to see if that is a test customer, or perhaps an error in the data. Other than that isolated instance, however, we do not have residential customers in Arizona.

-----Original Message-----

From: DPOOLE@FCLAW.com [SMTP:DPOOLE@FCLAW.com]
Sent: Wednesday, May 23, 2001 5:13 PM
To: thc@lrlaw.com; kclauson@eschelon.com
Cc: mabdulq@uswest.com; jragge@uswest.com; JHERRON@FCLAW.com
Subject: §271 Proceeding, AZ Docket No. T-00000-97-0238

Attached is Qwest Corporation's First Set of Data Request to Eschelon. I will also be forwarding separately an attachment to the data requests.

Thank you.

<<PGG%01!.DOC>>

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you